UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SANDRA WILSON,

Plaintiff,

-against-

AIR SERV CORPORATION,

Defendant.

ECF Case

Case No. 14-cv-7444 (PKC)(LB)

ANSWER

Defendant Air Serv Corporation ("Defendant"), by and through its counsel Littler Mendelson, P.C., for its answer to the Complaint ("Complaint") responds as follows:

PRELIMINARY PARAGRAPHS

1. Defendant denies the allegations set forth in the first Preliminary Paragraph of the Complaint, except admits that Plaintiff purports to assert claims and seek money damages for alleged employment discrimination under Title VII of the Civil Rights Act of 1964, as amended. Defendant further denies that it engaged in any unlawful or discriminatory conduct toward Plaintiff or that she is entitled to the relief requested in the Complaint or any other relief.

2. Defendant denies the allegations set forth in the second Preliminary Paragraph of the Complaint, except admits that Plaintiff seeks to invoke the Court's jurisdiction under 42 U.S.C. § 2000e *et seq*. and the other statutes cited therein. Defendant further denies that it engaged in any unlawful or discriminatory conduct toward Plaintiff or that she is entitled to the relief requested in the Complaint or any other relief.

THE COMPLAINT

3. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Complaint, except admits that, according to its

records, Plaintiff's address is 391 Hendrix Street, Brooklyn, New York, 11207.

4. Defendant admits the allegations in paragraph 2 of the Complaint.

5. Defendant admits the allegations in paragraph 3 of the Complaint.

6. Defendant denies the allegations in paragraph 4 of the Complaint, except admits that Plaintiff purports to proceed as set forth therein.

7. Defendant denies the allegations in paragraph 5 of the Complaint.

8. Defendant denies the allegations in paragraph 6 of the Complaint.

9. Defendant denies the allegations in paragraph 7 of the Complaint.

10. Defendant denies the allegations set forth in the "Preliminary Statement" of Plaintiff's supplementary attachment to paragraph 8 of the Complaint ("Supplementary Attachment"), except admits that Plaintiff purports to assert claims under Title VII of the Civil Rights Act of 1964, is female, is over the age of forty, and, upon information and belief, is African-American and/or Black.

11. Defendant denies the allegations set forth in paragraph 1 of the "Statement of Facts" section of Plaintiff's Supplementary Attachment, except admits that Plaintiff commenced employment as a supervisor with Air Serv in October 2012 at a pay rate of $10.00 per hour, that Plaintiff was placed on 90-day introductory period, and that Air Serv provides, among other things, transportation and security services at John F. Kennedy ("JFK") airport.

12. Defendant denies the allegations set forth in paragraph 2 of the "Statement of Facts" section of Plaintiff's Supplementary Attachment.

13. Defendant denies the allegations set forth in paragraph 3 of the "Statement of Facts" section of Plaintiff's Supplementary Attachment.

14. Defendant denies the allegations set forth in paragraph 4 of the "Statement of Facts" section of Plaintiff's Supplementary Attachment, except admits that Delta Airlines ceased

operations at JFK Terminal 3 in or around May 2013, and that Plaintiff and other personnel were transferred to JFK Terminal 2.

15. Defendant denies the allegations set forth in paragraph 5 of the "Statement of Facts" section of Plaintiff's Supplementary Attachment, except admits that Defendant offered Plaintiff a supervisor position at American Airlines Terminal 8 in or around August 2013 due to the cessation of security operations at Delta Terminal 3, that Plaintiff's pay rate continued to be $10.00 per hour, and that Plaintiff was placed on 90-day introductory period for this new position.

16. Defendant denies the allegations set forth in paragraph 6 of the "Statement of Facts" section of Plaintiff's Supplementary Attachment.

17. Defendant denies the allegations set forth in paragraph 7 of the "Statement of Facts" section of Plaintiff's Supplementary Attachment, except admits that Defendant hired a male supervisor in or around September 2013 to work at American Airlines Terminal 8, and that this supervisor initially received a pay rate of $11.00 per hour.

18. Defendant denies the allegations set forth in paragraph 8 of the "Statement of Facts" section of Plaintiff's Supplementary Attachment, except admits that Plaintiff received a relief schedule in October 2013.

19. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 of the "Statement of Facts" section of Plaintiff's Supplementary Attachment.

20. Defendant denies the allegations set forth in paragraph 10 of the "Statement of Facts" section of Plaintiff's Supplementary Attachment, except admits that Plaintiff's probationary period ended in or around November 2013, that Defendant had placed a freeze on pay raises for certain positions in November 2013, and that Plaintiff did not initially receive a

pay increase at the conclusion of her probationary period.

21. Defendant admits the allegations set forth in paragraph 11 of the "Statement of Facts" section of Plaintiff's Supplementary Attachment.

22. Defendant denies the allegations set forth in paragraph 12 of the "Statement of Facts" section of Plaintiff's Supplementary Attachment, except admits that in May 2014, Plaintiff provided a list of supervisors with whom she worked to the New York State Division of Human Rights ("NYSDHR"), and that the list included Sonita Lall, who is African-American and/or Black.

23. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 13 of the "Statement of Facts" section of Plaintiff's Supplementary Attachment, except admits that Defendant discussed with the NYSDHR and did offer a settlement sum and to change Plaintiff's rate to $11.00 per hour, and that Plaintiff declined that offer.

24. Defendant denies the allegations set forth in paragraph 14 of the "Statement of Facts" section of Plaintiff's Supplementary Attachment, except admits that Defendant increased Plaintiff's rate of pay to $11.00 per hour on or about May 31, 2014.

25. Defendant denies the allegations set forth in paragraph 15 of the "Statement of Facts" section of Plaintiff's Supplementary Attachment, except admits that the NYSDHR issued a "No Probable Cause" decision in July 2014, and denies knowledge or information sufficient to form a belief as to the truth of the allegations concerning Plaintiff's Freedom of Information Law request to the NYSDHR.

26. Defendant denies the allegations set forth in paragraph 16 of the "Statement of Facts" section of Plaintiff's Supplementary Attachment, except admits that Plaintiff worked a relief schedule for part of her employment.

27. Defendant denies the allegations set forth in paragraph 17 of the "Statement of Facts" section of Plaintiff's Supplementary Attachment.

28. Defendant denies the allegations set forth in paragraph 18 of the "Statement of Facts" section of Plaintiff's Supplementary Attachment.

29. Defendant denies that Plaintiff is entitled to the relief sought in paragraph 19 of Plaintiff's Supplementary Attachment, or to any other relief in this matter.

30. Defendant admits the allegations in Paragraph 9 of the Complaint.

31. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the Complaint, except admits Plaintiff dual-filed a Charge of Discrimination with the Equal Employment Opportunity Commission.

32. Paragraph 11 of the Complaint does not state any allegations requiring a response.

33. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 of the Complaint, except admits that the Notice of Right to Sue attached to Plaintiff's Complaint is dated September 16, 2014.

Defendant denies that Plaintiff is entitled to the relief set forth in the Wherefore clause of the Complaint, or to any other relief against Defendant.

GENERAL DENIAL

Defendant denies each and every allegation in the Complaint not specifically admitted herein.

DEFENSES

Defendant asserts the following defenses and/or affirmative defenses, without assuming any burden of proof it does not have as matter of law.

FIRST DEFENSE

The Complaint fails, in whole or in part, to state a claim upon which relief may be granted.

SECOND DEFENSE

To the extent that Plaintiff's claims under Title VII are based on alleged conduct which occurred more than 300 days before she filed an administrative charge of discrimination with the EEOC, such claims are time-barred.

THIRD DEFENSE

Some or all of the claims and causes of action set forth in the Complaint are barred by waiver, estoppel, and/or unclean hands.

FOURTH DEFENSE

Plaintiff's claims, or the damages she may recover, are barred or at least reduced by her failure to mitigate damages.

FIFTH DEFENSE

To the extent that Plaintiff claims punitive damages, those claims are barred in that Defendant did not act maliciously or with reckless indifference toward Plaintiff.

SIXTH DEFENSE

Plaintiff's claims are barred in whole or in part because Defendant established and complied with policies, programs, and procedures for the prevention and detection of unlawful discriminatory, harassing, and/or retaliatory practices by employees, and/or exercised reasonable care to prevent and promptly correct any such practices, and Plaintiff unreasonably failed to take advantage of any preventive or corrective opportunities provided by Defendant to otherwise avoid harm.

SEVENTH DEFENSE

Plaintiff's claims are barred, in whole or in part, because the employment-related actions about which she complains were trivial and/or taken for legitimate, non-discriminatory, and non-retaliatory reasons.

EIGHTH DEFENSE

Plaintiff's demand for a Jury is barred because Plaintiff signed an agreement waiving her right to a Jury for any claim against Defendant, including claims arising out of her employment.

NINTH DEFENSE

The Complaint is barred in whole or in part by Plaintiff's own conduct, contributory, or comparative fault.

TENTH DEFENSE

Subject to proof through discovery, Plaintiff's request for relief is barred in whole or in part by the after-acquired evidence doctrine.

ELEVENTH DEFENSE

Plaintiff was properly compensated at all times.

TWELFTH DEFENSE

Plaintiff's claims are barred under the doctrine of accord and satisfaction.

THIRTEENTH DEFENSE

At all material times, Defendant had no knowledge of and did not condone, encourage, ratify or acquiesce in any alleged unlawful conduct. To the extent that any of Defendant's employees engaged in any alleged unlawful conduct or omissions that violated the law, such actions were outside the scope of their employment, were contrary to the policies and directives of Defendant, and were not done in furtherance of Defendant's business interests.

FOURTEENTH DEFENSE

Defendant's actions or inactions were not the proximate, legal, or substantial cause of any damages, injury, or loss suffered by Plaintiff, the existence of which is denied.

FIFTEENTH DEFENSE

All actions taken by Defendant with respect to Plaintiff were based on reasonable factors other than Plaintiff's race, color, or gender, or any other protected category.

SIXTEENTH DEFENSE

All actions taken by Defendant with respect to Plaintiff were lawful, in good faith, based on sound business judgment, and were taken for legitimate and non-discriminatory reasons.

SEVENTEENTH DEFENSE

In the event Plaintiff can demonstrate that her race, color, or gender was a motivating factor in any employment decision that she challenges, she is not entitled to money damages or any other relief because Defendant would have taken the same action in the absence of any such impermissible factor(s).

EIGHTEENTH DEFENSE

Plaintiff's claims are barred in whole or in part by her failure to satisfy administrative prerequisites to asserting such claims.

NINETEENTH DEFENSE

At all times, Plaintiff was an at-will employee of Defendant.

TWENTIETH DEFENSE

Defendant reserves the right to raise any and all other defenses that may become evident during discovery or otherwise.

WHEREFORE, Defendant respectfully requests judgment dismissing the Complaint in its entirety, with prejudice, together with costs and disbursements, including reasonable attorneys' fees, and such other and further relief as to the Court may be just and proper.

Dated: March 18, 2015
New York, New York

/s/ Craig R. Benson

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